IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5284 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASUDEV FULABHAI

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5284 of 2002

MR IS SUPEHIA for Petitioner No. 1

MR SUDHIR MEHTA, Ld. AGP for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 27/03/2003

ORAL JUDGEMENT

1. With the consent of the parties when the Civil Application came up for hearing the main matter is taken

for final hearing today.

2. The short facts of the case are that the petitioner is an Armed Police Constable and when he was working at Vadodara City as per order dated 4-3-1997, he was placed under suspension pending prosecution of the criminal case for the offence under Section 468, 471, 420, 506 and 120-b of IPC filed against the petitioner with Anand Police Station. It is the case of the petitioner that thereafter from 18-9-1997 the subsistence allowance was increased to 75%. However, on 9-4-2002, the order came to be passed by the Dy. Police Commissioner, whereby he recorded that even when the petitioner was under suspension, criminal cases are lodged against the petitioner and he was found of indulging in criminal activities and, therefore, the subsistence allowance was stopped. It is that order of the Dy. Police Commissioner which is under challenge in this petition.

3. Mr.Supehia, learned Counsel for the petitioner, submitted that so long as the petitioner is under suspension it is obligatory on the part of the department to pay subsistence allowance and he submitted that such subsistence allowance cannot be stopped until the departmental inquiry is completed or the criminal prosecution is concluded. Mr.Supehia has relied upon the judgement of the Apex Court in the case of "Jagdamba Prasad Shukla vs. State of U.P. and others", reported at 2000 AIR SCW, 3047 for contending that suspended employee is entitled to subsistence allowance as of right and he has also relied upon another judgement of the Apex Court in the case of "B.D.Shetty and others v. M/s.Ceat Ltd. and others", reported at 2001 AIR SCW, 4422 for contending that the subsistence allowance must be paid and if the inquiry is not concluded within a stipulated time limit it must be increased and he submitted that in any event, there is no authority on the part of the respondent to stop the payment of subsistence allowance and, therefore, he contended that the order deserves to be quashed and set aside and the authority be directed to pay the subsistence allowance to the petitioner.

4. On behalf of the respondent authority, learned AGP Mr.Mehta submitted that the only ground on the basis on which the payment of subsistence allowance stopped is the continuance of criminal activities by the petitioner even after he was placed under suspension. However, Mr.Mehta is unable to show any law supporting the exercise of such power including any case-law for such purpose.

5. Under the above circumstances, it appears that when the petitioner was initially placed under suspension as per the order dated 4-3-1997, subsistence allowance was to be paid and it is also the case of the petitioner that he was also paid the subsistence allowance accordingly. It further appears that as per the order dated 18-9-1997 the subsistence allowance of the petitioner came to be increased from 50% to 75%. Thereafter on account of the criminal case lodged against the petitioner during the period of suspension, the order has been passed. In my view, the law is settled on the point that so long as the employee is under suspension it is obligatory on the part of the employer to pay subsistence allowance, because ultimately the family members of the employee would be depending upon the only source of income of subsistence allowance. As such the same is to subsist the contractual relationship of the employer and the employee until it is finally terminated or put an end to. It is an admitted position that the petitioner is under suspension and the departmental inquiry or criminal prosecution on the basis of which suspension order came to be passed are not concluded and the petitioner is neither discharged, nor terminated or dismissed from service. Therefore, in my view, as per the settled legal position, the petitioner would be entitled to the payment subsistence allowance. The attempt made by the learned AGP to contend that since the petitioner has indulged himself into criminal activities even pending suspension, in my view, cannot be a ground for withholding or stopping the subsistence allowance. If it is reported that criminal activities have been continued, it would be open to the department to take action in accordance with law for early disposal of the criminal case on the basis of which suspension order has been passed or the early conclusion of the departmental inquiry, as the case may be, or other action which is warranted under the law, but withholding or stopping subsistence allowance, in my view, would not be permissible.

6. In view of the aforesaid discussion, the order dated 9-4-2002 passed by the Dy. Police Commissioner, Vadodara of stoppage of payment of subsistence allowance to the petitioner is quashed and set aside. The respondents are directed to consider and calculate the balance of subsistence allowance to the petitioner in accordance with law and are further directed to disburse the said subsistence allowance accordingly to the petitioner preferably within a period of three months from the date of receipt of the writ of this Court.

Petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs.

7. In view of the order passed in the main matter, no orders in the Civil Application. The Civil Application is disposed of accordingly.

27-3-2003 (Jayant Patel, J.)
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